

USDS SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 3/25/08

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NMJ Consultant Group, Inc.,
Individually and on behalf of a class of all those
similarly situated,

Plaintiff,

vs.

CADBURY ADAMS CANADA, INC.,
CADBURY SCHWEPPE'S PLC, HERSHEY
CANADA INC., THE HERSHEY COMPANY,
MARS CANADA INC., MARS,
INCORPORATED, MARS NORTH AMERICA,
MARS SNACKFOODS U.S. LLC, NESTLE
CANADA INC., NESTLE S.A., NESTLE USA,
Inc., and ITWAL, LTD.

Defendants.

Case No.: 08 CV 00910 (PKC)

ECF CASE

STIPULATION
AND ~~PROPOSED~~ ORDER

VME DISTRIBUTORS, INC.,
Individually and on behalf of a class of all those
similarly situated,

Plaintiff,

vs.

CADBURY ADAMS CANADA, INC.,
CADBURY SCHWEPPE'S PLC, HERSHEY
CANADA INC., THE HERSHEY COMPANY,
MARS CANADA INC., MARS,
INCORPORATED, MARS NORTH AMERICA,
MARS SNACKFOODS U.S.A. LLC, NESTLE
CANADA INC., NESTLE S.A., NESTLE USA,
INC., and ITWAL, LTD.

Defendants.

Case No.: 08 CV 01570 (PKC)

ECF CASE

STIPULATION
AND ~~PROPOSED~~ ORDER

WHEREAS Plaintiffs filed Complaints in the above-captioned cases;

WHEREAS Plaintiffs allege price fixing of chocolate by defendants;

WHEREAS more than sixty complaints have been filed to date in federal district courts throughout the United States by plaintiffs purporting to bring actions on behalf of direct and indirect purchasers alleging antitrust violations by manufacturers, distributors, and sellers of Chocolate (collectively "the Chocolate Cases");

WHEREAS several motions are pending before the Judicial Panel on Multidistrict Litigation to transfer the Chocolate Cases for coordinated and consolidated pretrial proceedings pursuant to 28 U.S.C. Section 1407, and plaintiffs and defendants The Hershey Company, Mars, Incorporated, and Nestle U.S.A., Inc. (collectively, "the Chocolate Companies") anticipate that additional responses will be filed;

WHEREAS plaintiffs anticipate the possibility of Consolidated Amended Complaints in the Chocolate Cases;

WHEREAS plaintiffs and the Chocolate Companies have agreed that an orderly schedule for any response to the pleadings in the Chocolate Cases would be more efficient for the parties and for the Court; and

WHEREAS no prior extensions have been granted;

NOW, THEREFORE, IT IS HEREBY STIPULATED by and among the undersigned counsel for all parties herein, subject to approval of the Court, as follows:

1. The deadline for the Chocolate Companies to answer, move, or otherwise respond to plaintiffs' Complaints shall be extended until the earliest of the following dates: (1) forty-five days after the filing of a Consolidated Amended Complaint in the Chocolate Cases; or (2) forty-five days after plaintiff provides written notice to the Chocolate Companies that plaintiffs do not intend to file a Consolidated Amended Complaint, provided however, that in the event that the Chocolate Companies should agree or be ordered to respond prior to that date in

any Chocolate case, the Chocolate Companies will respond to the Complaint in the above-captioned case on that earlier date.

2. The defense counsel identified below shall accept service of the Complaint filed in this case, including any amended or consolidated complaint, on behalf of the domestic entities that they represent. The Chocolate Companies shall not contest the sufficiency of process or service of process; provided, however, that by entering into this Stipulation no defendant waives any other defense, including but not limited to the defense of lack of personal or subject matter jurisdiction, improper venue, or service of an improper entity.

3. The plaintiffs will not to seek discovery until the Judicial Panel on Multidistrict Litigation rules on the pending motions to transfer and the transferee district enters a case management order, provided, however, that in the event that the Chocolate Companies should agree or be ordered to provide discovery in any Chocolate case before that date, the Chocolate Companies will simultaneously provide the same discovery to the plaintiffs in the above-captioned actions.

4. This extension is available, without further stipulation with counsel for plaintiffs, to all named defendants.

Dated: March 24, 2008

COHEN, MILSTEIN, HAUSFELD & TOLL, P.L.L.C.

By: Robert G. Eisler

Robert G. Eisler

150 East 52nd Street

Thirtieth Floor

New York, NY 10022

Tel: (212) 838-7797

Fax: (212) 838-7745

SO ORDERED


Hon. P. Kevin Castel, U.S.D.J.

3-25-08

Michael D. Hausfeld
Christopher J. Cormier
Cohen, Milstein, Hausfeld & Toll, P.L.L.C.
1100 New York Avenue, N.W.
Suite 500, West Tower
Washington, D.C. 20005
Tel: (202) 408-4600
Fax: (202) 408-4699

Michael P. Lehmann
Cohen, Milstein, Hausfeld & Toll, P.L.L.C.
One Embarcadero Center
Suite 2440
San Francisco, CA 94111
Tel: (415) 229-2080
Fax: (415) 986-3643
*Attorneys for Plaintiffs NMJ Consultant Group, Inc.
and VME Distributors, Inc.*

MCDERMOTT WILL & EMERY LLP

By: Michael R. Huttenlocher
Michael R. Huttenlocher (MH-1710)
340 Madison Avenue
New York, NY 10017
(212) 547-5400

David Marx, Jr.
227 West Monroe Street
Chicago, Illinois
Telephone: (312) 984-7668
Fax: (312) 984-7700
Attorneys for Mars, Incorporated

KIRKLAND & ELLIS LLP

By: Craig S. Primis
Craig S. Primis, P.C. (CP-5017)
655 Fifteenth Street
Washington, DC 20005-5793
Telephone: (202) 879-5000
Fax: (202) 879-5200
Attorneys for The Hershey Company

HOWREY LLP

By: *Christina Guerola Sarchio*

Christina Guerola Sarchio (CS0620)

1299 Pennsylvania Avenue, N.W.

Washington, DC 20004

Telephone: (202) 383-6503

Fax: (202) 383-6610

Attorneys for Nestle U.S.A., Inc.